United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

FOR MR. JUSTICE [illegible]

TRANSCRIPT OF RECORD.

Court of Appeals of the District of Columbia

JANUARY TERM, 1920.

No. 3259. 631

E. G. HARDEBECK, APPELLANT.

vs.

RICHARD E. HAMILTON AND GRACE M. HAMILTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 28, 1920.

PRINTED MARCH 8, 1920.

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Court of Appeals of the District of Columbia

JANUARY TERM, 1920.

No. 3359.

E. G. HARDEBECK, APPELLANT,

vs.

RICHARD E. HAMILTON AND GRACE M. HAMILTON, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 2, 1920.

Court of Appeals of the District of Columbia.

No. 3359.

E. G. HARDEBECK, Appellant,

vs.

RICHARD E. HAMILTON et al.

a Supreme Court of the District of Columbia.

No. 63106. At Law.

RICHARD E. HAMILTON and GRACE M. HAMILTON, Plaintiffs,

vs.

E. G. HARDEBECK, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Complaint in the Municipal Court.*

Filed November 25, 1919.

In the Supreme Court of the District of Columbia.

No. 63106. At Law.

RICHARD E. HAMILTON and GRACE M. HAMILTON, Plaintiffs,

vs.

E. G. HARDEBECK, Defendant.

DISTRICT OF COLUMBIA, *To wit:*

Your Complainants Richard E. Hamilton and Grace M. Hamilton being first duly sworn according to law, states that they are entitled to the possession of the premises No. 503 Quincy Street, northwest, located in the District of Columbia, and that the same is unlawfully detained from them and held without right by the defend-

ant E. G. Hardebeck to whom the complainants' predecessor in title through Stone and Fairfax agents had heretofore rented the said premises as a monthly tenant and whose tenancy and estate has been determined by the service of a due notice to quit, by plaintiffs who have purchased said property for their own use and occupancy. Complainants therefore pray that a Summons be issued, commanding the defendant to appear and show cause why judgment should not be given against him for the restitution of the possession of said premises, and costs of this suit.

RICHARD E. HAMILTON,
For GRACE M. HAMILTON.

Subscribed and sworn to before me this 16th day of October A. D. 1919.

[SEAL.]

ALBERT W. SIOUSSA,
Notary Public, D. C. [SEAL.]

2 *Summons in the Municipal Court.*

* * * * * * *

The President of the United States, to the defendant, E. G. Hardebeck, Greeting:

You are hereby summoned to appear in this Court on the 29 day of October A. D. 1919, at 10 o'clock A. M., to answer the plaintiffs' complaint and show cause why judgment should not be given against you for the restitution of the possession of the premises described in the complaint under oath filed herein by said plaintiffs Richard E. Hamilton and Grace M. Hamilton and costs of this suit, and in case of your failure so to appear and answer, the suit will be proceeded with as in case of default.

Witness the Honorable Judges of said Court this 17 day of October A. D. 1919.

BLANCHE NEFF, [SEAL.]
Clerk,
By R. H. ROLLINS,
Assistant Clerk.

1.00 Pd.

_____,
Ass't Cl'k.

Marshal's Return.

10/18/1919.

Summoned as within directed.

MAURICE SPLAIN,
U. S. Marshal,
By ESKRIDGE,
Deputy Marshal.

Judgment in the Municipal Court.

Nov. 15, 1919.

Judgment after trial for the Defendant with costs.
(Appeal noted.)

EDW. B. KIMBALL,
Judge.

3 *Affidavit of Plaintiffs.*

Filed November 25, 1919.

* * * * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me, a Notary Public in and for the District of Columbia, Richard E. Hamilton and Grace M. Hamilton, who being duly sworn depose and say that they are the plaintiffs in the above entitled cause, and that E. G. Hardebeck is the defendant, and affiants say that they are entitled to the possession of house and premises known as 503 Quincy Street, Northwest, Washington, D. C., which said premises are now in the possession of the defendant and are wrongfully withheld from them by said defendant. Affiants say that said defendant was in possession of said premises as a monthly tenant by virtue of an agreement between him and Stone & Fairfax, a corporation, agents for the former owner of said property, said tenancy having commenced on the 15th day of May, 1918. That affiants by deed dated the 4th day of September, and recorded the 15th day of September, 1919, among the Land Records of the District of Columbia, acquired the fee simple title to said property from one Sallie R. Townsend, the then owner of the same; that affiants purchased the same for occupancy by themselves and their three infant children. That thereafter, on the 13th day of September, 1919, and after affiants had acquired title to said property, affiant Richard E. Hamilton went to said premises for the purpose of serving said defendant a notice to quit; that he was informed by defendant's wife that said defendant was not at home, that she did not know when he would be home, and that he might remain down town for dinner.

4 Affiant says that said notice to quit (a copy of which is hereto attached and prayed to be read and considered as a part hereof), was then left with said defendant's wife, she being a person of proper age with the request that she give it to said defendant when he returned. That at the trial of this cause in the Municipal Court said defendant having been called to the stand as a witness in his own behalf, and having been duly sworn, stated that said notice had been handed to him by his wife on the evening of the 13th day of September, A. D. 1919. That upon the expiration of said notice, as will appear from the record in these proceedings, plaintiffs instituted a suit for possession of said premises in the Mu-

nicipal Court of said District, which said suit resulted in a judgment for the defendant, from which said judgment affiants have appealed to this court. Affiants further say that they are bona fide purchasers of said property; that they require and desire the same for their own occupancy, and that of their three infant children, all of whom are under four years of age. That affiants and said children are at present living in a single rented room, in a house recently sold, the owner of which desires possession Dec. 1/19. That affiant Richard E. Hamilton is an employe of the United States Government, being employed in the Capital Stock Tax Division of the Internal Revenue Bureau, in the United States Treasury Department. Affiants further say that since the purchase of said property they have not accepted any rent from said defendant.

RICHARD E. HAMILTON.
GRACE M. HAMILTON.

Subscribed and sworn to before me this 22nd day of November, 1919.

[SEAL.] PEYTON TORBERT,
Notary Public, D. C.

Com. Ex. 1/13/20.

5 Washington, D. C., September 13, 1919.

Mr. E. G. Hardebeck,
503 Quincy Street, Northwest,
Washington, D. C.

DEAR SIR:

We are desirous to have possession of house and premises known as number 503 Quincy Street, Northwest, located in the District of Columbia, which until recently you held of Stone & Fairfax as a tenant by the month.

The reversion has by, assignment and conveyance, become vested in us.

The undersigned Richard E. Hamilton is in the employ of a branch of the Government, being an examiner of capital stock tax returns in the Internal Revenue Bureau of the Treasury Department. The undersigned, Grace M. Hamilton, is not in the employ of or officially connected with any branch of the Government.

The premises are necessarily required by the undersigned, Richard E. Hamilton, who is a bona fide purchaser of the property and who purchased it for occupation by himself and his dependent wife and children. The property has been sold to the undersigned Grace M. Hamilton. She is a bona fide purchaser of the property and she purchased the property for her own occupancy.

Now, therefore, we hereby give you notice to remove from and quit said premises known as number 503 Quincy Street, Northwest, located in the District of Columbia, at the expiration of thirty days

from the end of your present month's tenancy so that this notice shall expire October 15, 1919.

Very truly yours,

(Signed) RICHARD E. HAMILTON.
(Signed) GRACE M. HAMILTON.

6 *Affidavit of Defendant.*

Filed December 5, 1919.

* * * * * * *

DISTRICT OF COLUMBIA, *To wit:*

Personally appeared before me a Notary Public, in and for the District of Columbia, Everett G. Hardebeck, who being duly sworn deposes and says, that he is the defendant in the above entitled cause and that he is and has been for several years last past, the tenant in premises known as #503 Quincy street, Northwest, Washington D. C.; that your affiant came into possession of said premises lawfully and legally and still retains same lawfully and legally. Affiant admits that plaintiffs are the record title owners of said property, but says that he has not been served personally with a thirty day notice to quit said premises, by them or either of them or anyone else acting in their stead. Your affiant is informed and believes however, that the said Richard E. Hamilton, in company with another man called at said premises, on the 13th day of September, 1919; that the said Richard E. Hamilton remained in an auto at the curb while the other man, calling at the door, was advised by affiant's wife, one Evelyn V. Hardebeck, who answered through a side window, that affiant was not at home, whereupon said man or caller handed the alleged thirty day notice through the window, to said wife; that said plaintiffs nor anyone acting for them, made no other effort whatsoever, prior or subsequent to the aforesaid occasion on the thirteenth day of September, 1919, to serve your affiant personally with said Notice, though your affiant was at home every morning and evening, and at his place of employment during the day, each and
7 every day for a period of several months prior to said date and subsequent thereto; and that your affiant has never been served with a thirty day notice to quit personally. Affiant says further, that he paid to Stone and Fairfax, the rental agents of said property, on the 15th day of September, 1919, two days subsequent, to alleged service of Notice, $29.50 as rent in advance to October 15th, 1919 and that said Check was cashed and the money was not nor has it ever been returned or tendered in return by the plaintiffs, or any agent acting for them, to your affiant; that your affiant, Everett G. Hardebeck is an employe of the United States and has been for a number of years, being employed in the United States Treasury Department. Therefore your affiant is advised and believes, that he has not received a good and sufficient Notice to quit and is lawfully entitled to the possession of said premises.

EVERETT G. HARDEBECK.

Subscribed and sworn to before me this fourth day of 4" December, 1919.

[SEAL.] FREDERICK J. RICE,
Notary Public, D. C.

Motion for Judgment.

Filed December 8, 1919.

* * * * * * *

Now come the plaintiffs, and move the court for judgment in the above entitled cause for failure of the defendant to file a sufficient affidavit of defense.

HAMILTON & HAMILTON,
Attorneys for Plaintiffs.

Mr. Frederick J. Rice,
Attorney for Defendant:

Please take notice that the foregoing motion will be for
8 hearing before the Justice to whom it may be assigned on Friday, the 12th day of December, 1919, at 10 o'clock, A. M., or as soon thereafter as counsel can be heard.

HAMILTON & HAMILTON,
Attorneys for Plaintiffs.

Supreme Court of the District of Columbia.

Friday, December 12th, 1919.

Session resumed pursuant to adjournment, Hon. F. L. Siddons, Justice presiding.

* * * * * * *

Come now the parties hereto by their respective attorneys of record; whereupon, plaintiffs' motion for judgment being argued and considered, it is ordered that said motion be, and the same is hereby granted. Wherefore, it is considered that the plaintiffs do have and recover of the defendant possession of premises No. 503 Quincy Street, Northwest, located in the District of Columbia, together with costs of suit to be taxed by the clerk and have execution thereof.

From the foregoing judgment, the defendant by his said attorney in open court, notes an appeal to the Court of Appeals; whereupon, the penalty of a bond to operate as a supersedeas, is hereby fixed in the sum of Five Hundred Dollars.

Memorandum.

December 17, 1919.—Supersedeas bond approved and filed.

9 *Assignment of Error.*

Filed January 20, 1920.

* * * * * * *

Comes now the defendant, by his attorneys, Bell, Marshall and Rice and says that the Court erred as follows:

1st. In construing, as a good and sufficient thirty day notice under Section 1223 of the Code of Law of the District of Columbia, a Notice served upon the wife of the tenant, when the tenant was within the District of Columbia and could have been found with diligent effort.

2nd. And for other errors that are apparent on the face of the record.

E. G. HARDEBECK,
By BELL, MARSHALL AND RICE,
His Attorneys.

Designation of Record.

Filed January 20, 1920.

* * * * * * *

The Clerk of said Court will please certify the record in the above entitled cause to the Court of Appeals of District of Columbia, that is to say: Complaint & Summons of M. Court, with endorsements; Declaration & affidavit of plaintiff, affidavit of defense, motion for judgment, and notation of judgment rendered in Supreme Court D. C. and Assignment of Error.

BELL, MARSHALL AND RICE,
Attorneys for Def'd.

10 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 9, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 63106 at Law, wherein Richard E. Hamilton and Grace M. Hamilton are Plaintiffs and E. G. Hardebeck is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 28th day of January, 1920.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG,
Clerk,
By W. E. WILLIAMS,
Assistant Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 3359. E. G. Hardebeck, appellant, vs. Richard E. Hamilton et al. Court of Appeals, District of Columbia. Filed Jan. 28, 1920. Henry W. Hodges, clerk.